

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.03.2017

PRONOUNCED ON : 17.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.51 of 2017
and
Crl.M.P.No.1410 of 2017

Annadurai (A1) ... Appellant/Accused I

- Vs -

State rep by
The Inspector of Police,
Kodumudi Police Station,
Erode District.
(Crime No.153 of 2015) ... Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Mahila Court (Mahila Fast Track Court), Erode in S.C.No.111 of 2015 dated 07.03.2016.

For Appellant : Mr.K.Shanmugam

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu, J.)

The appellant is the first accused in S.C.No.111 of 2015 on the file of the learned Sessions Judge, Mahila Court (Mahila Fast Track Court), Erode. The second accused was one Mr.Murugan. The first accused stood charged for offences under Sections 451, 392 and 302 IPC and the second accused for the offences under Section 451 r/w 34 IPC, Section 392 r/w 34 IPC and Section 302 IPC. By judgment dated 07.03.2016, the trial Court convicted both the accused under all the charges framed against the respective accused. So far as the appellant / first accused is concerned, the trial Court sentenced him to undergo rigorous imprisonment for seven years and pay a fine of Rs.500/- in default to undergo simple imprisonment for one year for the offence under Section 451 (Part II) IPC; to undergo rigorous imprisonment for ten years

and pay a fine of Rs.500/- in default to undergo simple imprisonment for two years for the offence under Section 392 (Part i) and to undergo imprisonment for life and pay a fine of Rs.5000/- in default to undergo simple imprisonment for two years for the offence under Section 302 IPC. Challenging the said conviction and sentence the appellant / first accused is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

2.1. The deceased in this case was one Mrs.Pavathal. She was the maternal aunt of P.W.1 Mr.Natarajan. P.W.1 was residing at Karattam Palayam village in Erode Taluk. The deceased was living in her house situated two houses away from the house of P.W.1. The husband of the deceased died four years before the occurrence and thus the deceased alone was residing at her house. These two accused also belong to the same village.

2.2. It is alleged that few years before the occurrence, P.W.1 had borrowed a sum of Rs.1,00,000/- from the deceased. Four days before the occurrence, he repaid the said amount to the deceased. The deceased in turn, deposited the said amount in the bank.

2.3. It is the case of the prosecution that the fact that P.W.1 had repaid Rs.1,00,000/- to the deceased was known to the first accused. But, he was not aware of the fact that the deceased had deposited the said amount in the bank. He was under the impression that the said amount was kept in the house of the deceased.

2.4. A1 and A2 were friends. A1 therefore hatched a plan to commit robbery of the above said sum of Rs.1,00,000/- from the house of the deceased. He took the second accused with him to commit the said crime. Accordingly, on 23.04.2015, around 07.00 p.m., the first accused came to the house of the deceased and watched television programme along with her. Then, around 11.00 p.m. he took A2 with him and went to the house of the deceased and with the help of a ladder, scaled down the southern wall of the house, claiming down the staircase and entered into the house. The deceased was then sleeping. The second accused stood near her. The first accused went to the next room, opened the bureau and searched for the above said sum of Rs.1,00,000/-. But there was only a paltry sum of Rs.1,500/- found in the bureau. There was no other jewel or any other valuable property.

2.5. The first accused told the second accused about the same. The deceased was awakened by the above murmur. She questioned the accused as to why they were in the room. The first accused asked her as to where she had kept Rs.1,00,000/-. The deceased told that she had already deposited the said sum in the bank. The deceased started shouting and raised alarm. Immediately, the second accused

took out a grinding stone lying there and gave the same to the first accused. The first accused hit her with the grinding stone on her head and chest. The deceased fell down and fainted. Then, the second accused held the deceased and the first accused silt the neck of the deceased with an arruval. Then, with a marker pen he wrote on the wall in Tamil as under:

“தொடரும் வேட்டை ஏ.கே.சூர்யா”

which means 'hunt will continue -A.K.Surya'.

2.6. Then both of them fled away from the scene of occurrence with Rs.1,500/-, a pen and an arruval. There were bloodstains on their clothes. The occurrence was not noticed by anyone.

2.7. P.W.1 as usual went to the house of the deceased at 07.30 a.m. on 24.04.2015. The house was bolted from inside. He rang the calling bell and also tapped at the door, but there was no response from inside. Then, the neighbours came there. Since even after violent knocking at the door, there was no response from inside, P.W.1 with the use of a ladder scaled down the wall of the house, went into the house and found the deceased lying in the pool of blood in the kitchen. There were number of injuries on the body. Her spectacle was found broken and she was lying in a pool of blood. P.W.1 informed her relatives and thereafter he went to Kodumudi Police Station and made a complaint at 09.00 a.m. on 24.04.2015.

2.8. Upon the said complaint, a case in Crime No.153 of 2015 was registered for offence under Section 302 I.P.C. Ex.P1 is the complaint and Ex.P23 is the F.I.R. Both the documents were sent to the Court.

2.9. P.W.21 the then Inspector of Police took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch and also recovered the bloodstain earth and sample earth from the place of occurrence. He recovered the broken spectacles of the deceased. At his request, the Fingerprint experts arrived at the scene of occurrence. At 10.30 a.m. on 24.04.2015, after thorough examination, he found that there was no decipherable chance finger print. The sniffer dog which was brought to the place of occurrence also did not bring out any clue. He conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.10. P.W.14, Dr.S.Karthikeyan conducted autopsy on the body of the deceased on 24.04.2015 at 04.40 p.m. He found the following injuries:

“External injuries: A cut throat injury lacerated injury over anterior aspect of neck 12x5 cm and 4 inch depth, complete cut injury of trachea, oerophagus,

canobid vessels and neck murales. 2X2 cm laceration right side jaw, 1x1 cm punctured wound left eyebrow, 2x2 cm laceration left index finger and right thumb. Contusion over left side scalp.

Internal examination: abdomen-intact, peritoneal cavity - intact, ribs contusion, fracture of 1 and 2nd rib left side, heart - 150 gms c/s pale, Lungs - 550 gms each, c/s pale; Hyoid bone - intact, Stomach - empty, Liver-1500 gms c/s pale, Spleen - 150 gms c/s pale, Kidney 100 gms c/s pale, intestine distended with gas, bladder - empty, uterus - atrophied, skull - contusion 4x5 cm over left side scalp. Brain - 1500 gms, Hematema found over left side temporal lobe. Spine - intact."

Ex.P19 is the postmortem certificate and Ex.P20 is his final opinion regarding the cause of death. He opined that the said injuries found on the body of the deceased could have been caused by a weapon like M.O.14 (arruval). He further opined that the death was due to shock and hemorrhage due to the injuries.

2.11. During the course of investigation, P.W.21 recovered the bloodstained clothes from the body of the deceased and forwarded the same to Court. When the investigation was in progress, it is alleged that on 26.04.2015, both the accused surrendered before P.W.13, the Village Administrative Officer of Aavudaiyarparai village. On such surrender, the first accused made a voluntary confession in the presence of the Village Assistant. P.W.13 reduced the same into writing. Ex.P15 is the said extra judicial confession allegedly given by the first accused. Then, along with Ex.P14 special report, at 05.45 p.m. he produced both the accused before P.W.21.

2.12. P.W.21 arrested both the accused. On such arrest, the first accused produced a sum of Rs.1,500/- from his pocket. The first accused, while in custody made a voluntary confession, in which, he disclosed the place where he had hidden the bloodstained dothi, shirt, arruval, marker pen and the ladder. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced these material objects.

2.13. The second accused also similarly made a voluntary confession, in which, he disclosed the place where he had hidden the bloodstained lungi and banian. In pursuance of the same, he took the police and the witness to the place of hideout and produced the said material objects. P.W.21 recovered the same under independent mahazars.

2.14. On returning to the police station he forwarded both the accused to Court for judicial remand and also forwarded the material objects also to Court. At his request, the material objects were sent for chemical examination, which revealed that there were human bloodstains on all the material objects. On completing the investigation, he laid chargesheet against the accused.

2.15. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 21 witnesses were examined, 29 documents and 21 material objects were marked.

2.16. Out of the said witnesses, P.W.1 the nephew of the deceased has stated about the repayment of Rs.1,00,000/- made by him to the deceased a few days before the date of occurrence. He has further stated that the deceased alone was in her house. He has further stated that on 24.04.2015 at 07.30 a.m. in the usual course he went to the house of the deceased and he found the house bolted from inside. There was no response and with the help of the neighbours, he scaled down the wall by using a ladder and went into the house and found the deceased lying in a pool of blood in the kitchen. He has further spoken about the complaint given to the police. P.W.2, the scientific officer in the forensic lab has stated that he examined the visceral organs and there was no ethyl alcohol or poison.

2.17. P.W.3 an expert from the Regional Forensic Lab has stated that he examined the material objects sent to him for examination and found that there were human bloodstains on the material objects. P.W.4 a neighbour of the deceased has stated that around 07.00 to 08.00 a.m. on 24.04.2015, P.W.1 was knocking at the door of the house of the deceased, as there was no response, with the help of her, P.W.1 scaled down the wall of the house with a ladder and then she found the deceased lying dead inside the house. P.W.5 has spoken about the preparation of the observation mahazar and the rough sketch and recovery of the material objects.

2.18. P.W.6 has stated that on 23.04.2015, at around 06.00 p.m., she found the first accused at the house of the deceased and was watching a television programme. P.W.7 is the Bank Manager of Canara Bank, Thamaraipakkam branch. He has stated that the deceased deposited a sum of Rs.1,00,000/- on 23.04.2015. P.W.8 the Head Clerk of the learned Judicial Magistrate Court, Kodumudi has stated that she forwarded the material objects to the forensic lab for examination. P.W.9 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence.

2.19. P.W.10 has not stated anything incriminating. P.W.11 has stated that he took the deceased to the Canara Bank as she wanted to go to the said bank for depositing the said amount and at 02.00 p.m. according to him, they returned to the house of the deceased in his Omni van. P.W.12 has stated that on 24.04.2015 around 10.00 p.m. he found both the accused together at Karur bus stand. P.W.13, V.A.O. has spoken about the surrender of both the accused before him and the extra judicial confession given by the first accused and also about the recovery of the material objects in pursuance of the disclosure statement made to P.W.21 by the accused. P.W.14 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.15, the head of the sniffer dog squad has stated that at the place of occurrence the dog could not make out any clue.

2.20. P.W.16 has spoken about the photographs taken by him at the place of occurrence. P.W.17 a constable has stated that he handed over the body of the deceased to the doctor for postmortem. P.W.18 a constable has stated that he handed over the FIR to the learned Magistrate at 10.30 a.m. on 24.04.2015. P.W.19 yet another constable has stated that she assisted in lifting the body of the deceased from the place of occurrence and handed over the same to the doctor for postmortem. P.W.20 has spoken about the registration of the case on the complaint of P.W.1. P.W.21 has spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However they did not choose to examine anyone nor mark any documents. Their defence was a total denial. Having considered all the above the trial Court convicted them as detailed in the first paragraph of the judgment and that is how the appellant / first accused alone is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

5. This is a case based on circumstantial evidence. The foremost circumstance is that the deceased alone was at her house as her husband died four years before the occurrence. She was lastly seen alive in her house by P.W.6 around 06.00 p.m. The dead body of the deceased was found on the next day around 07.00 - 07.30 a.m. According to the medical evidence, the injuries found on the body of the deceased could have been caused by a weapon like grinding stone. The death was due to shock and hemorrhage due to the said injuries. From these evidences, the prosecution has clearly established that it was a homicide and that she died sometime between 06.00 p.m. on 23.04.2015 and 07.30 a.m. on 24.04.2015.

6. At the place of occurrence, no chance finger print was traced. There was no other clue. The prosecution therefore has to mainly rely on the extra judicial confession said to have been given by the first accused to P.W.13 on 26.04.2015. According to P.W.13, these two accused appeared before him on 26.04.2015 and the first accused made a voluntary confession vide Ex.P15.

7. The learned counsel for the appellant would submit that the said extra judicial confession cannot be believed as the accused would not have chosen P.W.13 to confess. We find no force at all in the said argument. A perusal of the extra judicial confession (Ex.P15) would show that the accused had explained as to why he had chosen the Village Administrative Officer to make such a confession. He has stated that since the police had suspicion against him, and since he had fear for the police, he had chosen to surrender before the Village Administrative Officer. Though P.W.13 has been put to severe cross examination, nothing has been elicited to even remotely suspect his credibility. Thus, we do not find any reason to doubt the evidence of P.W.13. Thus, we hold that Ex.P15 extra judicial confession was made voluntarily by the first accused.

8. In the said extra judicial confession, he has narrated clearly that he came to know that P.W.1 had returned Rs.1,00,000/- to the deceased. He has further stated that he was under the impression that the deceased was keeping the said amount in her house. On the day of occurrence, he alone went to the house of the deceased chatted with the deceased and watched T.V. Programme. At that time, he hatched a plan to commit theft of Rs.1,00,000/- from her house. He has further stated that he explained his plan to the second accused and the second accused has agreed to the same and that is how they came to the house of the deceased around 11.00 p.m., scaled down the wall of the house using a ladder, entered into the house and found the deceased was sleeping in a room. A2 stood near her and A1 went into the other room and searched for the above said sum of Rs.1,00,000/- in the bureau. But neither the said amount nor any valuable property was found. Cash of Rs.1,500/- alone was found. The first accused returned to the other room and informed the same to the second accused. This murmur awakened the deceased. She questioned them and she told them that she had deposited the amount in the bank. Then she started shouting. They killed her. The first accused dropped the grinding stone on the head and silt her neck with arruval and then the first accused took a marker pen and wrote that the hunt will continue and thereafter both of them fled away from the scene of occurrence.

9. If this extra judicial confession is found to be true and if the same inspires the confidence of the Court, this by itself would be sufficient to sustain the conviction of the

first accused. The law is that if the extra judicial confession is shrouded with any doubt, then as a rule of prudence, the Court should look corroboration from any other independent source. But in the instant case, we find that Ex.P15 extra judicial confession is a voluntary one which carries no doubt with it. It inspires the fullest confidence of this Court. Therefore, so far as the first accused is concerned, this by itself would be sufficient to convict him for the offences for which he has been charged.

10. Apart from that, in pursuance of the disclosure statement made by the first accused, arruval, dothi, shirt and a marker pen was recovered, which all contain human bloodstain, for which also the accused has got no explanation. This also further strengthens the case of the prosecution.

11. From these evidences, in our considered view, the prosecution has proved all the above charges against the first accused beyond reasonable doubt and thus the trial Court was right in convicting the appellant.

12. So far as the quantum of sentence is concerned, the trial Court has imposed only the minimum punishment, which also does not require any interference at the hands of this Court.

13. In the result, we do not find any merit at all in this appeal, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant / first accused by the learned Sessions Judge, Mahila Court (Mahila Fast Track Court), Erode in S.C.No.111 of 2015 dated 07.03.2016, is hereby confirmed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court (Mahila Fast Track Court),
Erode.
2. The Inspector of Police,
Kodumudi Police Station,
Erode District.

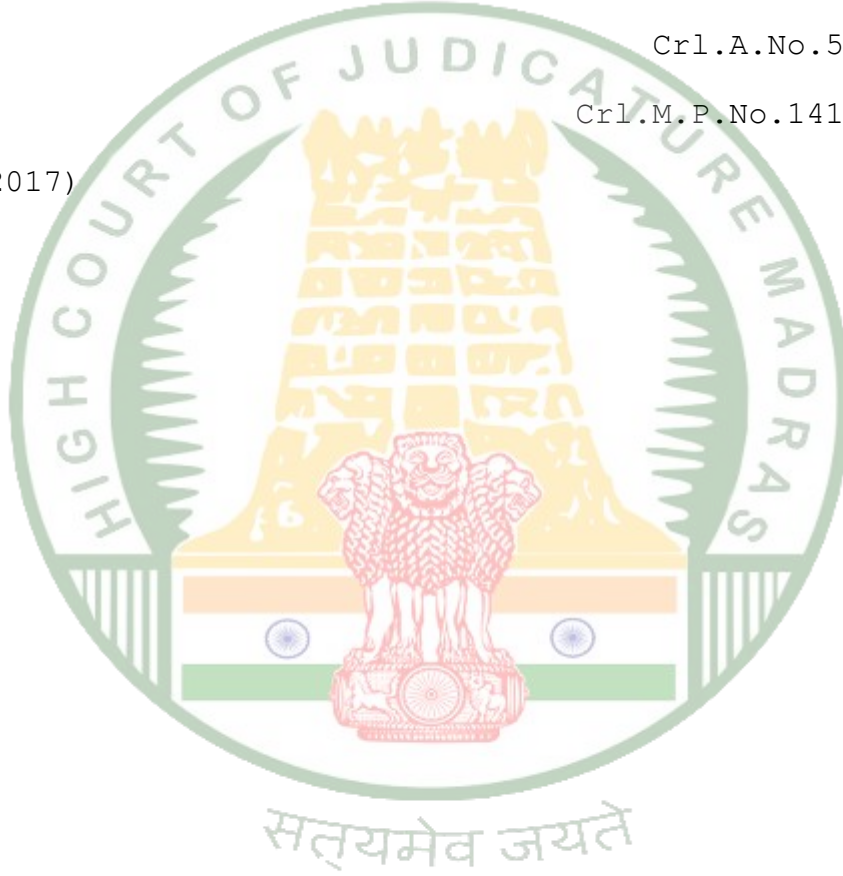
3. The Superintendent,
Central Prison,
Coimbatore.
(In duplicate for communication
to the Detenu)

4. The Public Prosecutor,
Madras High Court.

+1cc to Mr.K.Shanmugam, Advocate, S.R.No.17302

SAI (CO)
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